

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	CASE NO: 2:13-CV-00193
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
RICK PERRY, ET AL.,	)	Friday, June 6, 2014
	)	(2:54 p.m. to 2:56 p.m.)
Defendants.	)	(3:01 p.m. to 4:01 p.m.)

---

TELEPHONE CONFERENCE

BEFORE THE HONORABLE NELVA GONZALES RAMOS,  
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
Clerk:	Brandy Cortez
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

APPEARANCES FOR:

Plaintiffs:

J. GERALD HEBERT, ESQ.  
EMMA SIMPSON, ESQ.  
191 Somervelle Street  
#405  
Alexandria, VA 22304

ARMAND DERFNER, ESQ.  
P.O. Box 600  
Charleston, SC 29402

CHAD W. DUNN, ESQ.  
Brazil and Dunn  
4201 Cypress Creek Parkway, Suite 530  
Houston, TX 77068

NEIL G. BARON, ESQ.  
914 FM 517 Road, W.  
Suite 242  
Dickinson, TX 77539

Mexican American  
Legislative Caucus,  
et al.:

EZRA D. ROSENBERG, ESQ.  
Dechert, LLP  
902 Carnegie Center, Suite 500  
Princeton, NJ 08540-6531

Texas League of Young  
Voters Education Fund:

NATASHA KORGAONKAR, ESQ.  
NAACP Legal Defendant and Educational  
Funds, Inc.  
40 Rector Street  
5th Floor  
New York, NY 10006

State of Texas:

JOHN BARRET SCOTT, ESQ.  
Scott, Yung, L.L.P.  
208 N. Market Street  
Suite 200  
Dallas, TX 75202

JOHN R. CLAY, ESQ.  
Office of the Attorney General  
P.O. Box 12548  
MC 001  
Austin, TX 78711

APPEARANCES FOR: (CONTINUED)

State of Texas: DAVID WHITLEY, ESQ.  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711

WHITNEY DEASON, ESQ.  
BEN DONNELL, ESQ.  
ARTHUR D'ANDREA, ESQ.

United States  
of America: ELIZABETH S. WESTFALL, ESQ.  
ANNA BALDWIN, ESQ.  
DANIEL FREEMAN, ESQ.  
U. S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
NWB Room 7125  
Washington, DC 20530

Mexican American  
Legislative Caucus,  
et al.: KEMBEL SCOTT BRAZIL, ESQ.  
Brazil and Dunn  
4201 Cypress Creek Parkway  
Suite 530  
Houston, TX 77068

Texas Association of  
Hispanic County Judges  
and County  
Commissioners: ROLANDO L. RIOS, ESQ.  
115 E. Travis  
Suite 1654  
San Antonio, TX 78205

Oscar Ortiz, et al.: ROBERT W. DOGGETT, ESQ.  
Texas Rio Grande Legal Aid  
4920 North IH 35  
Austin, TX 78751

1           Corpus Christi, Texas; Friday, June 6, 2014; 2:54 p.m.

2                               (Call to Order)

3           **THE CLERK:** Good afternoon, counsel. This is Brandy  
4 with Judge Ramos's court. Do I have parties on the line for  
5 the individuals, Veasey, Mr. Dunn, Mr. Derfner, Mr. Baron?

6           **MR. DUNN:** Yes. Good morning, Ms. Cortez. This is  
7 Chad Dunn. I have with me Armand Derfner and Neil Baron, and  
8 the three of us will be speaking depending upon the topics.  
9 Also on are Scott Brazil, Gerry Hebert, and Emma Simson.

10           **THE CLERK:** Thank you.

11                           And for the United States, Ms. Baldwin, Ms. Westfall,  
12 Mr. Freeman?

13           **MS. WESTFALL:** Yes. This is Elizabeth Westfall. We  
14 have Anna Baldwin also and Dan Freeman on the line, who will be  
15 speaking, and others who are counsel for the United States who  
16 will be listening but not participating.

17           **THE CLERK:** Thank you.

18                           And for the Mexican American Legislative Caucus,  
19 Mr. Rosenberg?

20           **MR. ROSENBERG:** Yes. I'm on. Thank you.

21           **THE CLERK:** Thank you, Mr. Rosenberg.

22                           For Ortiz, et al., Mr. Doggett, Ms. Van Dalen?

23           **MR. DOGETT:** This is Robert Doggett. Thank you.

24           **THE CLERK:** Thank you, Mr. Doggett.

25                           For the Texas Association of Hispanic County Judges,

1 Mr. Rios?

2 (No audible response)

3 THE CLERK: For the Texas League of Young Voters,  
4 Mr. Haygood?

5 (No audible response)

6 Mr. Dunbar?

7 MS. KORGANKAR: He won't be joining us. This is  
8 Natasha Korgankar. I'm here.

9 THE CLERK: Thank you. Will you be the only one  
10 speaking?

11 MS. KORGANKAR: I will be.

12 THE CLERK: Okay. Thank you.

13 And, then, for the State of Texas, Mr. Whitley,  
14 Mr. Donnell, Mr. D'Andrea, Mr. Scott?

15 MR. SCOTT: John Scott and Reid Clay on one phone.

16 THE CLERK: Thank you.

17 MR. D'ANDREA: This is Arthur D'Andrea on another  
18 phone.

19 THE CLERK: Thank you. And will you three be doing  
20 the speaking?

21 MS. DEASON: This is Whitney Deason on another phone,  
22 and I will be speaking as well.

23 THE CLERK: Thank you.

24 (Off the record from 2:55:38 until 2:55:43)

25 //

1           **MR. HEBERT:** We will not be speaking for the Veasey  
2 LULAC plaintiffs, just listening.

3           **THE CLERK:** Thank you, Mr. Hebert.

4           **(Pause)**

5           **THE CLERK:** Mr. Rios, are you present on the line for  
6 the Texas Association of Hispanic County Judges?

7           **MR. RIOS:** I am, and I'm also on behalf of Hidalgo  
8 County.

9           **THE CLERK:** Thank you.

10          **MR. RIOS:** But Mr. Henderson cannot make it.

11          **THE CLERK:** Okay. Thank you.

12               I'm going to place you all on a brief hold. We've  
13 got an attorney representing each of the parties on the line,  
14 and the judge should be taking the bench in just a moment.

15          **(Recess was taken from 2:57 p.m. until 3:01 p.m.)**

16          **THE COURT:** Court calls Cause Number 2:13-193,  
17 *Veasey, et al. versus Perry, et al.* And Ms. Cortez will take  
18 role here.

19          **THE CLERK:** Your Honor, Mr. Dunn, Mr. Derfner,  
20 Mr. Baron, Mr. Hebert, Mr. Brazil, and Ms. Simson are present  
21 for the individuals. Ms. Baldwin, Mr. Freeman, Ms. Westfall  
22 are present for the United States. Mr. Rosenberg is present  
23 for the Mexican American Legislative Caucus. Mr. Doggett is  
24 present for Ortiz, et al. Mr. Rios is present for the Texas  
25 Association of County Judges and Hidalgo County. Ms. Korgankar

1 is present for the Texas League of Young Voters. Mr. Scott,  
2 Mr. Clay, Mr. Whitley, Mr. Donnell, Mr. D'Andrea, and  
3 Ms. Deason are present for the State of Texas.

4 **THE COURT:** All right. We've got several matters  
5 pending. Let me just go through a couple of the old matters  
6 before we discuss the motions to quash. But there was a  
7 defendant's amended motion to compel that I believe the  
8 remaining issue was the common interest doctrine and the  
9 parties submitted a brief on that, or a joint -- not a joint  
10 statement that you all agreed, but it was a one -- one document  
11 submitted. Anything else on that, Mr. Scott?

12 **MS. DEASON:** Your Honor, this is Whitney Deason with  
13 defendant. I'll be speaking to that issue.

14 **THE COURT:** Okay.

15 **MS. DEASON:** The issue here can really be broken down  
16 into two -- two issues. The first issue is a more global  
17 issue. It's really whether the common interest doctrine  
18 applies in the Fifth Circuit, and the law is clear here that  
19 the Fifth Circuit does not recognize common interest doctrine  
20 for plaintiffs. We've cited numerous cases in both the  
21 statement that was submitted Monday, as well as even the motion  
22 to compel, that notes that the application of the common  
23 interest doctrine is specifically limited in the Fifth Circuit  
24 to co-defendants and potential co-defendants and that Fifth  
25 Circuit recognizes the doctrine as narrowly construed because

1 it's an obstacle (indiscernible). And the reason that courts  
2 have exhibited such restraint in applying this doctrine is that  
3 it excludes documents and communications from discovery.

4           The defendant's current stance is that -- is  
5 consistent with the law in the Fifth Circuit, that this common  
6 interest doctrine does not apply to the plaintiff. And as  
7 such, we believe that the documents currently being withheld on  
8 this basis should be produced.

9           The second issue, which hinges on your Honor's ruling  
10 on the first issue, but I'd like to address is very quickly,  
11 is, you know, whether the Court -- if the Court decides to go  
12 ahead and grant this protection to plaintiffs in this circuit  
13 and essentially create new law in the Fifth Circuit, then we  
14 need to address the fact that plaintiffs need to provide logs  
15 documenting the communications that they're withholding on this  
16 basis. To date, plaintiffs -- plaintiffs and plaintiff  
17 intervenors have not provided any logs documenting the  
18 communications they're withholding on this basis. They've  
19 essentially flatly refused to log thousands of communications  
20 they claim to be withholding on this basis. And I think it's  
21 important to note that in logging this information the common  
22 interest doctrine is not a privilege in and of itself; it is,  
23 instead, an extension of an underlying privilege, such as  
24 attorney-client or work product. And, so, what happens is the  
25 common interest doctrine simply prevents a waiver of that



1 foundational privilege when a communication occurs with the co-  
2 parties. And, so, in logging any communications that they may  
3 be able to protect under this doctrine, they need to identify  
4 that -- the foundational evidence for that underlying privilege  
5 that they're seeking to extend.

6           You know, it's also important to note that Rule 26 of  
7 the Federal Rules of Civil Procedure places the burden on the  
8 party withholding documents based on privilege to show that  
9 those documents are, in fact, privileged. Otherwise, other  
10 parties, in this case, defendants, can't adequately assess  
11 whether those privileges apply. So, if your Honor is -- is  
12 going to extend this doctrine in this case and potentially  
13 create new law in this circuit and allow for these documents to  
14 be protected, they need to be logged.

15           And I think it's important to note that to the extent  
16 plaintiffs and plaintiff intervenors suggest that the agreement  
17 concerning production format supports the existence of a common  
18 interest doctrine or allows them to not log the communications  
19 that they have with one another, between parties, which was  
20 suggested in the -- the agreement or the joint statement  
21 submitted on Monday, that suggestion is incorrect. On its  
22 face, paragraph 25 of that agreement is expressly limited to  
23 the United States Department of Justice and the Texas Attorney  
24 General's Office. And I just want to read an abbreviated  
25 version of it quickly, because I think the language is very

1 important. It says:

2 "The parties need not note on a privilege log any  
3 document exchanged solely among counsel, individuals  
4 working directly on behalf of counsel in connection  
5 with this litigation, or supervisory staff of the  
6 United States Department of Justice or the Texas  
7 Attorney General's Office."

8 I think the language here shows that this provision  
9 does not address communication between both parties. It simply  
10 addresses intra-agency communications; so, communications  
11 within these two government agencies. So, for example, you  
12 know, an attorney with DOJ who may have to correspond with  
13 various support staff or who may have to send something up and  
14 down the chain, we're not -- we don't think that those  
15 communications should be logged, and that's what this specific  
16 provision goes to. It doesn't go towards any communications  
17 that may occur between the co-parties.

18 The last (indiscernible) note here is -- I'm going to  
19 sort of -- we're in a different boat with DOJ because they have  
20 provided privilege logs to this point. However, after three  
21 chances to provide an adequate privilege log, they continue to  
22 fall short in that their most recent supplemental privilege log  
23 contained numerous entries that claimed multiple privileges,  
24 including common interests and work product. Instead of  
25 actually establishing the elements of those privileges claimed

1 and showing how the documents that were withheld based on those  
2 privileges were properly held on the basis of those privileges,  
3 they simply provided document description of e-mails, so one --  
4 the one-word description. That does not allow us to adequately  
5 assess whether the privilege is properly applied.

6 So, you know, to sum up, essentially, our stance is  
7 that the law in the Fifth Circuit is very clear --

8 **THE COURT:** Okay. Let me ask you about that. When  
9 you say that the doctrine has not been recognized by the Fifth  
10 Circuit, does -- does -- is there a case from the Fifth Circuit  
11 specifically say that, or the cases before the Fifth Circuit  
12 have been regarding co-defendants and potential co-defendants,  
13 or has the Fifth Circuit specifically said it does not apply to  
14 plaintiffs?

15 **MS. DEASON:** The Fifth Circuit has recognized time  
16 and again that it does not apply to plaintiffs. You know, I --  
17 I believe in the April 15th hearing we had asked the Department  
18 of Justice to point to a case where it could, and it couldn't.  
19 Uh --

20 **THE COURT:** But I am now asking you to point me to a  
21 case that says it does not apply to plaintiffs, that expressly  
22 says that.

23 **MS. DEASON:** And --

24 **THE COURT:** Can you point me to that case?

25 **MS. DEASON:** Okay. So, *In re Santa* -- excuse me?

1           **THE COURT:** Can you point me to that case?

2           **MS. DEASON:** *In re Santa Fe* is a case, Fifth Circuit  
3 case, that says -- specifically limits the application of the  
4 common interest doctrine to co-defendants and potential co-  
5 defendants.

6           **THE COURT:** And did that case involve plaintiffs  
7 trying to take advantage of that doctrine?

8           **MS. DEASON:** No, ma'am. That -- that case involves  
9 defendants.

10          **THE COURT:** Okay. Has there been any case before the  
11 Fifth Circuit where the plaintiffs have tried to take  
12 advantage, I guess, of that -- of that privilege and the Fifth  
13 Circuit has said, no, it does not apply to plaintiffs?

14          **MS. DEASON:** Not in a -- not in the same -- not in an  
15 analogous situation to what we have in this case.

16          **THE COURT:** Any -- any situation where the Fifth  
17 Circuit has said this common interest doctrine does not apply  
18 to plaintiffs?

19          **(Pause)**

20          **MS. DEASON:** Um, yes, your Honor. One -- one minute.

21          **THE COURT:** Okay.

22          **(Pause)**

23          **MS. DEASON:** All right. Your Honor, we believe that  
24 even though *In re Santa Fe* does involve defendants --

25          **THE COURT:** Okay. Ma'am --

1           **MS. DEASON:** -- on the (indiscernible) --

2           **THE COURT:** -- please answer my question. I'm trying  
3 to narrow the issue here so that it will -- I don't have to do  
4 as much research as we've already done on this end, because  
5 you're arguing very generally, and that's kind of not what I've  
6 seen the law necessarily to say. So, what I'm trying to figure  
7 out, when you say the Fifth Circuit has not recognized the  
8 common interest doctrine for plaintiffs, has that court  
9 actually said that? Has there been a case where they ruled  
10 that on, or are you just analogizing? And if you are, that's  
11 fine. That's just all I'm trying to pinpoint here.

12           **MS. DEASON:** I -- I can't point you to a specific  
13 case. The best example I could give you would be a decision  
14 out of the Eastern District of Louisiana, 2012, *Crosby versus*  
15 *Blue Cross Blue Shield*. They said:

16                   "The Court has found no authority in this circuit  
17                   which extends common legal interest principles to  
18                   plaintiffs."

19           And that case specifically involved -- specifically  
20 says that because Crosby is the plaintiff in this suit, there  
21 is no indication -- and there is no indication that she will be  
22 occupying defensive posture in this case, the -- the other  
23 group involved does not fall under the rule; and that other  
24 group is not necessarily the plaintiff (indiscernible), but  
25 that -- that's the best --

1           **THE COURT:** Okay.

2           **MS. DEASON:** That's the best response I can give you  
3 (indiscernible).

4           **THE COURT:** All right. Who's going to argue the  
5 motion on the plaintiff's side?

6           **MR. ROSENBERG:** Your Honor, Ezra Rosenberg on behalf  
7 of Texas NAACP and the Mexican American Legislative Caucus, and  
8 I'll begin. I think Mr. Derfner will have a few words after I  
9 speak, if that's okay with your Honor.

10          **THE COURT:** Yes.

11          **MR. ROSENBERG:** I will be brief, because we think  
12 that we have laid this out. And your Honor asked the right  
13 question, which was: Is there any such Fifth Circuit law that  
14 holds in the manner that Texas has said it holds, and the  
15 answer is clearly no. Matter of fact, no court in the country  
16 has ever ordered discovery of this kind. And just briefly,  
17 the -- the case that Texas just relied on, *Crosby versus Blue*  
18 *Cross*, we dealt with in footnote three of our brief. It's a  
19 magistrate's decision that quoted dicta from another case,  
20 which was *Stanley*, which is another magistrate's decision, and  
21 there the person seeking to invoke the doctrine had a financial  
22 interest in the litigation but was neither a co-plaintiff nor a  
23 potential co-plaintiff. So, you have dicta based upon dicta,  
24 not Fifth Circuit level; we have other circuits which have  
25 applied the doctrine to plaintiffs, and no case -- and, your

1 Honor, I -- when I'm not doing pro bono work, I do mass tort  
2 defense. And in those sorts of cases we have numerous cases  
3 where there are numerous plaintiffs represented by different  
4 counsel, and I'm not aware of any instance where even in those  
5 cases the defendants have sought to intrude upon attorneys'  
6 work product, which is what this is all about. That's the one  
7 area where we do agree with Texas, because that's what they're  
8 trying to do, is get attorneys' work product by piercing the  
9 common interest protection. And there is even less basis here  
10 where, first of all, the same plaintiffs here were defendants  
11 in the Section 5 suit where Texas expressly stated on the  
12 record that such communications were protected by the common  
13 interests of the defendants there and asserted its own common  
14 interest protection even though they were plaintiffs.

15 Second, here the parties agreed -- and I'm going to  
16 quote the full sentence from the agreement concerning  
17 production format, which is ECF 61-6. In paragraph 25 it says:

18 "However, the parties" -- not just Texas and the  
19 Department of Justice, but -- "the parties need not  
20 note on a privilege log any document, including but  
21 not limited to draft documents, exchanged solely  
22 among counsel, individuals working directly on behalf  
23 of counsel in connection with this litigation,"  
24 parens, "(e.g. paralegals, analysts, and litigation  
25 support staff)," end parens, and then there is a

1           comma, "or supervisory staff of the U.S. Department  
2           of Justice or the Office of the Texas Attorney  
3           General."

4           So, the limitations that DOJ and the Texas A.G. only  
5           have to do with supervisory staff, because the private  
6           plaintiffs don't have supervisory staff in their counsel, but  
7           the sentence as a whole applies to all parties, including the  
8           private plaintiffs and plaintiff intervenors, and was a clear  
9           recognition by -- in this agreement that even though these are  
10          privileged communications, they don't have to be logged,  
11          because otherwise every party would be logging thousands upon  
12          thousands of internal e-mails because all of us deal with work  
13          product virtually every minute of every day.

14          And, third, this Court has ordered, and Texas has  
15          expressly requested, that counsel for the plaintiffs coordinate  
16          their efforts. In the number of depositions, we're supposed to  
17          coordinate with the DOJ and all of the private plaintiffs; the  
18          number of interrogatories; and, as your Honor recently  
19          indicated, the number of hours it filed. And you can't do that  
20          without coordination. Now, I want to emphasize what that has  
21          meant here.

22          First of all, as your Honor knows, we have not  
23          burdened this Court with redundant and duplicative pleadings,  
24          because we've coordinated among ourselves and with the  
25          Department of Justice. And that's taken a boat load of



1 coordination. I tried to count up briefly -- for example, just  
2 in preparing this submission, the joint submission, I counted  
3 about 100 to 150 e-mails between and among counsel. And  
4 according to Texas, they have a right to see those e-mails.  
5 And there's just absolutely no justification for that. If they  
6 want to know who our fact witnesses are going to be, they're  
7 going to get that at the appropriate time in accordance with  
8 what the rules that this Court sets down. If they want to know  
9 who our experts are going to be, there's going -- there is a  
10 procedure for that. And if they want to know, as they say in  
11 their brief, how intervenors and plaintiffs choose to interpret  
12 Section 2 of the Voting Rights Act and why Texas has been  
13 targeted with this litigation -- that's their words on page  
14 three or four of their brief -- well, first of all, they can  
15 read the complaint; they can propound -- they have the right to  
16 propound appropriate contention interrogatories, or they can  
17 wait for the findings of fact and conclusions of law. What  
18 they can't do is intrude on our work product or force the  
19 plaintiffs to log thousands upon thousands of e-mails dealing  
20 with pretrial discovery and trial strategy.

21 **THE COURT:** All right. Mr. Derfner, were you going  
22 to say anything?

23 **MR. DERFNER:** Yes. I'm going to be very brief, your  
24 Honor, although, frankly, my (indiscernible) may be a little  
25 strong. I want to -- I think we all need to apologize to the

1 Court for wasting your time, and, frankly, I feel like wasting  
2 my time, because the issue we have here is claims that the  
3 common interest rule applies to defendants but not to  
4 plaintiffs. It is not just frivolous; it is utter nonsense.

5 Over the past several weeks I have asked three  
6 times -- three separate times -- I have asked counsel,  
7 different counsel for the State of Texas, to find me a case --  
8 and I used the phrase "in the length and breadth of the United  
9 States of America" -- a case where lawyers for co-plaintiffs in  
10 a actual case, making communications out of that case, have  
11 been ordered to turn that in. Never got a case. Didn't get a  
12 case like that on Monday when the paper was filed, and we,  
13 obviously, didn't get one just now. They've never offered a  
14 case; they've never offered even a reason, a policy reason or a  
15 legal reason, why courts would conjure up such a bizarre one-  
16 way rule that they (indiscernible).

17 This is a complex case with a lot to do. Your Honor  
18 is overburdened; we are all overburdened. If we keep having to  
19 take junk issues like this -- and I use that term advisedly --  
20 we will never get to the trial date. And I think we all know  
21 what we're facing. But we need to get -- to deal with the real  
22 issues, not issues like this.

23 **THE COURT:** All right. Any --

24 **MR. DERFNER:** I apologize again to the Court, and I  
25 thank (indiscernible).

1           **THE COURT:** All right. Anyone from the Government or  
2 anything further from any other plaintiff?

3           **MS. WESTFALL:** Yes. This is Elizabeth Westfall for  
4 the United States. We strongly support everything that has  
5 been argued by Mr. Rosenberg and Mr. Derfner, and we would add  
6 from the outset, I mean, that Texas did not even fulfill the  
7 threshold issue of seeking -- of -- of stating any basis and  
8 that -- for seeking this discovery from the outset. These  
9 requests fall outside the scope of permissible discovery  
10 allowed by Rule 26(b). Under that rule discovery is confined  
11 to information that's relevant to actual claims and defenses,  
12 and the only thing that Texas has argued as to why it's  
13 relevant is that they are seeking information about plaintiffs'  
14 motivation in suing Texas over its photo I.D. law. In other  
15 words, defendants are seeking mental impressions, opinions, and  
16 legal theories of they're opposing counsel, so that is not  
17 appropriate under Rule 26(b).

18           I would add that the United States did not need to  
19 log any of these communications because the requests sought  
20 information that's simply not relevant. We do not need to  
21 amend our logs. And for that reason alone this discovery  
22 should be -- should be denied.

23           **THE COURT:** All right. Anything final, Ms. Deason?

24           **MS. DEASON:** Yes, I'd like to touch on a few points  
25 that remain. First, with respect to the agreement concerning

1 production format, I think the language is pretty clear that it  
2 is specifically tailored to the DOJ and the Texas Attorney  
3 General's Office.

4           Furthermore, on -- I believe it was Mr. Rosenberg's  
5 point about work product. You know, we -- we are primarily  
6 concerned here with communications that -- that show the  
7 underlying facts of why plaintiff has decided to litigate this  
8 issue. And, so, to the extent that, you know, these  
9 communications that may reflect trial strategy or coordination  
10 of discovery efforts are more appropriately deemed work  
11 product, which is a qualified privilege, than common interests,  
12 we -- we're okay with that. However, those documents need to  
13 be logged. That's something that plaintiffs have failed to do  
14 to this point.

15           Finally, let's see, with respect to the relevance  
16 issue, you know, we -- we're slowly but surely developing a  
17 picture of what has gone on and the efforts of, you know,  
18 (indiscernible) create litigation where perhaps none should  
19 exist. And, you know, just recently through, you know,  
20 deposition testimony that we took the last few weeks, you know,  
21 we've learned of an individual plaintiff who was never informed  
22 by anybody that she could form -- she could obtain a form of  
23 free identification to vote under SB 14, and she specifically  
24 said that, having learned of such an option, she would probably  
25 go get one. You know, so we believe that these types of

1 communications are relevant to the allegations that plaintiffs  
2 have made in their complaint, and, you know, they're relevant  
3 to any affirmative defenses we might make.

4 **THE COURT:** All right. Court finds the common  
5 interest doctrine applies to the communications between -- or,  
6 I guess, among the plaintiffs and their counsel.

7 So, is the next issue the log, Ms. Deason?

8 **MS. DEASON:** Yes, your Honor.

9 **THE COURT:** Okay. Anything further on that, Counsel?

10 **MR. ROSENBERG:** Just the tremendous burden of logging  
11 thousands upon thousands of e-mails that have absolutely no  
12 relevance to the -- and are not relevant for purposes of  
13 discovery, and in light of the agreement which, as I read, and  
14 if your Honor looks at it you'll see, that the -- it applies to  
15 the parties; not all the parties, not just DOJ and Texas,  
16 except the supervisory staff provision.

17 And, by the way, this is Ezra Rosenberg. Excuse me.

18 **THE COURT:** Court's not going to require that those  
19 documents be, I guess, set forth in the privilege logs.

20 Anything else on that issue?

21 **MS. DEASON:** Your Honor, this is Whitney Deason for  
22 defendants. I would just like to state that, you know,  
23 defendants have gone through hundreds of thousands of documents  
24 themselves and logged in the tens of thousands of documents in  
25 privilege logs.

1           **THE COURT:** But are you talking about documents  
2 regarding this common interest doctrine? Because that's what I  
3 thought was left; and that's the only thing I'm addressing  
4 right now. You can certainly argue something else, but I'm  
5 just trying to close out this remaining issue on the common  
6 interest doctrine.

7           **MR. SCOTT:** Your Honor, John Scott for the Texas  
8 defendants. That's all on this.

9           **THE COURT:** Okay. So, that's all on that matter.  
10 Another thing -- as far as I know, then, there is  
11 nothing left on that amended motion to compel? Ms. Deason or  
12 Mr. Scott?

13           **MS. DEASON:** I don't believe so.

14           **THE COURT:** Okay.

15           **MR. SCOTT:** That's all at this time.

16           **THE COURT:** All right. Then, the other thing you all  
17 were still negotiating -- I'm just following up on the United  
18 States' motion for a protective order regarding the Rule  
19 30(b)(6) deposition. And I don't have anything right now  
20 before me. I know you all were still negotiating. So, do we  
21 need to address anything today on that?

22           **MR. SCOTT:** Your Honor, John Scott for the Texas  
23 defendants. We are still in the process of formulating some  
24 proposed stipulations. In addition, the person that  
25 actually -- we've got a portion of that stuff we're going to

1 bring forward to the Court, but she's out of the country today,  
2 and that's not going to be ripe till next week.

3           **THE COURT:** Okay. Then -- but anything that's going  
4 to be ripe for our, I guess, ten-day status conferences, or  
5 whatever, I need a little bit of a heads up if you all want me  
6 to try to make a ruling at the time of the hearing. Otherwise,  
7 you know, if I'm getting hit with it at that point, I may need  
8 a little bit of time. But that's something you all can talk to  
9 between yourselves and with Brandy about when maybe you can get  
10 a joint statement in or a little bit of briefing; whatever is  
11 required, I'm sure you all can visit about.

12           So, the next thing I have is what we had discussed  
13 regarding the document production by the defendants and we  
14 had -- that last hearing we had and the Court had ordered that  
15 produced to the -- to the private plaintiffs. There's some  
16 competing orders that have been provided to the Court. So, is  
17 there anything else that you all want to discuss with the Court  
18 on that? I really think that the proposed order by the  
19 Government that was attached to 297 reflects the Court's ruling  
20 at that hearing. I understand, Mr. Scott, that you all want to  
21 discuss federal databases. But for purposes of my ruling at  
22 that hearing, I think what was submitted by the Government  
23 properly reflects the Court's order.

24           **MR. SCOTT:** And, your Honor, the portion that relates  
25 to us -- the Texas defendants being able to pursue those

1 databases, we did not want to be viewed as being in violation  
2 of any court order. And, so, I understood the Court to say  
3 that's (indiscernible) still go forward with that; we're just  
4 not going to do it at this time.

5 **THE COURT:** Okay. So, then, I'm going to, then,  
6 enter the Government's proposed order attached to DE-297. The  
7 State can still proceed at some point if you're going to argue  
8 the issue with the federal databases, correct?

9 **MR. SCOTT:** We do want those federal databases. And,  
10 again, your Honor, without those we're not -- we've been -- I  
11 think I've asked for the ability to refer to, I guess, provide  
12 a defensive strategy.

13 **MS. BALDWIN:** Your Honor, if I could speak to, you  
14 know, the issue of the federal databases -- this is not an  
15 issue that needs to be reopened at this juncture, and I'm happy  
16 to put in context of the threat that it would raise to this  
17 litigation. Essentially, yielding to defendants' eleventh-hour  
18 threats as far as the parties' prior agreement and this Court's  
19 prior orders seeking to obtain the federal databases that are  
20 fundamentally properly protected from disclosure under federal  
21 law can be virtually certain to do two things. The first is  
22 that -- and the time to pursue these databases would blow off  
23 the trial discovery schedule. Any order to produce that data  
24 would be subject to immediate appellate review by the United  
25 States, as we would seek all possible legal remedies to protect



1 the databases from improper (indiscernible).

2           **THE COURT:** I'm going to stop you just real quickly.  
3 Somebody's breathing very heavily into the phone, and it's  
4 affecting the sound on this end. So, you can proceed.

5           **MS. BALDWIN:** Okay. Hopefully that wasn't me, your  
6 Honor. Second, your Honor, we would say that defendants, even  
7 were they granted access to the databases, would not have  
8 access to any more meaningfully relevant information than they  
9 already have. The database comparisons that defendants already  
10 derived through this process allowed them to query the federal  
11 databases, to have them searched in exactly the manner that  
12 defendants wanted, and they've already received those results.  
13 Having already gotten those results last Friday, defendants  
14 don't need access to the entire underlying databases and the  
15 tens of millions of underlying records that are totally  
16 unconnected to this case, to the SB 14, and to any Texas  
17 resident.

18           Defendants have argued in the pleadings last week  
19 that they would be disadvantaged if they're unable to obtain  
20 the federal databases. That argument presumes that the United  
21 States has full access to the federal data and that without the  
22 federal data the defendant can't prepare the defense. That's  
23 just not true, your Honor. The Department of Justice has no  
24 more access to the federal agencies defendants -- to the  
25 federal agencies' data than defendants or private plaintiffs

1 do.

2           We set up a process in this case where everyone set  
3 out the searches that they wanted to have done with the federal  
4 databases. We did the searches -- we provided the Texas data  
5 to the federal agencies, and they conducted those searches. At  
6 no time has the Department of Justice been able to conduct its  
7 own private comparisons of federal data in this action. And,  
8 in fact, the Court's order prohibits the United States from  
9 doing any data comparisons using Texas's data to the federal  
10 databases that aren't disclosed. The only comparisons using  
11 Texas data to federal data that have been and will be done in  
12 this case have already been done and disclosed in accordance  
13 with ECF Number 174.

14           So, to reopen at this issue at this point is just  
15 (indiscernible). Texas is unable to show that they are  
16 prejudiced in any way. No party has, based on the information  
17 that's been disclosed, your Honor, and -- and we went ahead and  
18 disclosed because there was an agreed-upon -- the portions of  
19 the proposed order last week that were agreed upon between  
20 defendants' proposed order and the United States' proposed  
21 orders recognized the same amount of the Texas voter  
22 registration database should be disclosed. We agreed on that  
23 as to the private plaintiffs. And, so, the United States has  
24 already gone ahead and disclosed that data, which, in our view,  
25 we were required to under this Court's scheduling order absent

1 another ruling from this Court.

2           So, having disclosed that information, the place  
3 we're in is that all parties have equal access to the same  
4 information on who is a registered voter in Texas from the  
5 Texas voter registration database, save for what that voter's  
6 full social security nine is, and whether they match on a  
7 search requested by either plaintiffs or the defendants, from  
8 the federal data as well as the Texas data. No party has the  
9 ability to generate new search results for which Texas voters  
10 lack any form of acceptable SB 14 I.D. And that's because only  
11 defendants and DOJ have access to the state issued data, and  
12 the -- the state-issued I.D. data, and the private plaintiffs  
13 have no access to that. And no party, not DOJ, not Texas, and  
14 not the private plaintiffs, have any access to the raw data on  
15 who holds federally-issued forms of I.D.

16           Your Honor, this process was necessary to protect the  
17 sensitive federal data issue, data that involves millions of  
18 passport holders and members of the military, who have no  
19 connection to this litigation. The vast majority of the people  
20 in the databases that Texas is now seeking, they aren't Texas  
21 residents, much less Texas registered voters. They have no  
22 connection to this litigation. Because of this, we sought to  
23 protect that sensitive information, which is subject to a host  
24 of other federal statutes that haven't even been briefed.  
25 Again, any process that seeks to undo the delicate agreement

1 that the parties struck is going to make a September trial  
2 schedule impossible and for no benefit. Defendants can't show  
3 any prejudice, and we would respectfully request that the Court  
4 not allow this issue to be reopened at this juncture.

5 To the extent that the Court is inclined to consider  
6 allowing defendants access federal data, we would just say that  
7 it's far too important of an issue to be decided on an oral  
8 motion and that defendants should be required to set out in  
9 writing why they believe that they're entitled to the federal  
10 data, what information of any possible relevance they hope to  
11 glean from it that they don't already have from the results  
12 that they have that we've produced, and what prejudice that  
13 they're suffering without it, given that no other party has the  
14 access that they're seeking.

15 The United States believes that it is important to  
16 fully respond in writing because of the critical national  
17 security interest and data security interests that are  
18 implicated in this effort by defendants.

19 **THE COURT:** All right. Anything further, Mr. Scott?

20 **MR. SCOTT:** Your Honor --

21 **MR. SPEAKER:** Your Honor --

22 **MR. SCOTT:** -- it appears there's a common thread --  
23 this is John Scott; very briefly. There is a common thread in  
24 DOJ's arguments. One, that there was some -- they  
25 (indiscernible) today that we had some agreement that was

1 operating beforehand, that was the subject of Order Number 174  
2 of this Court. That was true up until May 28th when they  
3 enticed this Court to blow that agreement up. There are no  
4 agreements anymore between the parties to avoid trying to get  
5 these databases. That was done away with when our position on  
6 what we had -- well, I really believe it was truly very well  
7 thought out -- had entered into an agreement that we thought  
8 foreclosed their ability to prove some vital issue up to this  
9 Court. The Court was able to give them a lifeline on May 28th,  
10 and we now have to overcome that.

11 Now, it's never been the standard in federal  
12 discovery that the person seeking it has to show how they're  
13 prejudiced if they don't get that discovery. So, this add-on  
14 aspect, that they would like to add as a burden we have under  
15 trying to -- on trying to obtain those databases, it just  
16 simply does not exist in the law.

17 From a more practical standpoint, we're dealing  
18 with -- just one example. We have a plaintiff that has  
19 testified in this case who goes to school down in South Texas;  
20 she was outside of Houston; she registered to vote in Texas;  
21 she will come up on the list as a no-match person because she  
22 has no Texas form of I.D. that would be acceptable under SB 14.  
23 Yet we have also found out that that same person is -- has  
24 registered to vote in Indiana and has applied for a driver's  
25 license, a learner's permit, up there. So, now we're dealing

1 with a situation that had we had -- if we had access to their  
2 database, we could cross-reference that to all the different  
3 people who show up on the no-match list, who now will have  
4 histories of how they voted in the case as a result of that  
5 lifeline, and we will be able to find out how many more of  
6 those people are out there. I mean, and what we don't know,  
7 unfortunately, is all of the other material that's out there in  
8 those databases that might also help our case.

9           **THE COURT:** Okay. It --

10           **MR. SCOTT:** So --

11           **THE COURT:** Let me -- let me do this.

12           **MR. SCOTT:** (indiscernible)

13           **THE COURT:** Let me just --

14           **MR. SCOTT:** (indiscernible) prejudice is not correct.

15           **THE COURT:** Let me do this.

16           **MR. SCOTT:** Thank you.

17           **THE COURT:** I do think it's an important issue that  
18 probably needs to be set forth in a written motion instead of  
19 oral. So, would you want to file a motion, Mr. Scott?

20           **MR. SCOTT:** That would be great, your Honor, and may  
21 we get an expedited --

22           **THE COURT:** Okay.

23           **MR. SCOTT:** -- basis so that we're not waiting 20 or  
24 10 days for their response given the discovery cutoff is here?

25           **THE COURT:** Okay. Well, let -- when can you get your

1 motion on file?

2 **MR. SCOTT:** Uh, David? Whitley?

3 **MR. WHITLEY:** Your Honor, we would ask -- this is  
4 David Whitley with the defendants. Is Monday okay with your  
5 Honor?

6 **THE COURT:** But --

7 **MR. SCOTT:** How about Tuesday?

8 **THE COURT:** Yeah. That's fine. I'm supposed to be  
9 in trial, so -- Ms. -- is it Baldwin that was speaking for  
10 the --

11 **MS. BALDWIN:** Yes, ma'am. This is Ms. Baldwin. I  
12 apologize for not identifying earlier. But we would request,  
13 given the complexity of the issues, the number of federal  
14 agencies involved, no less than a week to respond.

15 **THE COURT:** How about by Friday?

16 **MS. BALDWIN:** We will absolutely do our best, your  
17 Honor.

18 **THE COURT:** Okay. And you --

19 **MR. SPEAKER:** (indiscernible)

20 **THE COURT:** -- you all need to limit your -- your  
21 briefing, remember, per the Court's order.

22 **MR. SCOTT:** Ten pages. Ten pages, right, your Honor?

23 **THE COURT:** Right.

24 **MR. DERFNER:** Your Honor, the private plaintiffs will  
25 want to have something to say, too, on this, because,

1 frankly --

2           **THE COURT:** That's fine.

3           **MR. DERFNER:** -- I have not --

4           **THE COURT:** Can you get it done by Friday also?

5           **MR. DERFNER:** Yes, ma'am. We will.

6           **THE COURT:** All right.

7           **MR. DERFNER:** But I have not heard one word from --  
8 from the defendants about what on earthy they propose to do  
9 with federal databases or why they want them and what they  
10 really --

11           **THE COURT:** And that's why we're going to get it in  
12 writing, in a brief writing, so we can all be on the same page  
13 as to what people are claiming and what needs to be argued.

14           Okay. Anything, then --

15           **MR. DERFNER:** Well --

16           **THE COURT:** Go ahead. I'm sorry; I think I cut  
17 someone off.

18           **MR. DERFNER:** This is Mr. Derfner. (indiscernible)

19           **THE COURT:** All right. Then, the -- regarding, then,  
20 the hearing we had and the Court's ruling, I am entering the  
21 order as I stated as the Government had proposed; Mr. -- the  
22 defendant, Mr. Scott, is going to be filing a motion regarding  
23 the federal databases, which will be responded to -- sounds  
24 like we should get that by next week.

25           So, anything else on the document issue, the database



1 issue?

2           **MR. SCOTT:** So, will the Court be issuing an order on  
3 the -- I'm sorry; this is John Scott. Will the Court be  
4 issuing an order on -- or make an order on the common interest  
5 and the -- the order we're getting for parties not having to do  
6 privilege logs?

7           **THE COURT:** No. I've stated it on the record, so --

8           **MR. SCOTT:** Okay.

9           **THE COURT:** All right? Unless you need anything  
10 further; I can clarify right now.

11           Then, the next thing I have is the motions to quash,  
12 correct? If -- who's proceeding on that from the --

13           **MR. D'ANDREA:** Your Honor, this is Arthur D'Andrea  
14 with the legislators.

15           **THE COURT:** Okay.

16           **MR. D'ANDREA:** And, first, I'd like to apologize. I  
17 think I misled Ms. Cortez when I announced. I do not represent  
18 the State. I actually have no interest in whether or not voter  
19 I.D. survives. My only interest in this case is to protect the  
20 legislators' interests.

21           **THE COURT:** Okay.

22           **MR. D'ANDREA:** So -- so, again, I am not here on  
23 behalf of the state, but for the (indiscernible) legislators.

24           When you say motion to quash, your Honor, do you mean  
25 the motion to quash the subpoena to testify or the motions to

1 quash the trans- -- for the subpoenas for documents that were  
2 recently transferred to the Court?

3 **THE COURT:** Well, what is before the Court for the  
4 Court to address.

5 **MR. D'ANDREA:** Okay.

6 **THE COURT:** I'm assuming there's a lot of similar  
7 issues, so whatever I have jurisdiction over, whatever is  
8 before this Court, I'll be happy to address today if we can.

9 **MR. D'ANDREA:** Okay. Well, I'd like, then, to start  
10 with document -- the subpoenas for documents that were recently  
11 transferred to the Court. The vast majority of those that were  
12 transferred are identical to subpoenas this Court has already  
13 ruled on. And, so, we can just put those aside, and I assume  
14 the Court will just apply its prior ruling on -- on those  
15 subpoenas. But there is one that is different, and that's the  
16 one that I think merits some attention from the Court.

17 **THE COURT:** Okay.

18 **MR. D'ANDREA:** And that is the subpoena for e-mail  
19 searches of Texas Legislative Council's e-mail address. So,  
20 this subpoena is different, because all of the other document  
21 subpoenas were just asking for documents from the legislators  
22 by subject matter, such as everything related to SB 14, and  
23 they allowed the legislators to file a response, which is the  
24 usual course of discovery. But to TLC the plaintiffs have sent  
25 broad search terms to 75 different people for TLC to run in

1 their computers. And one problem with the subpoena is that  
2 many of these people are duplicates. So, there are 17  
3 legislators listed in the TLC subpoena that are duplications.

4 So, for example, DOJ subpoenaed Speaker Straus  
5 directly, and they've demanded that Speaker Straus search his  
6 office for documents and that he search his e-mail computer,  
7 his work computer, and work e-mail, for every document related  
8 to SB 14. And then DOJ has now turned around and asked TLC to  
9 search Speaker Straus's work e-mail for every document related  
10 to (indiscernible).

11 **THE COURT:** Okay. But isn't this something that as  
12 attorneys you all should be able to get together and discuss?  
13 If it's duplication, we shouldn't be having duplication. It's  
14 just inefficient. But why am I having to step in on that  
15 issue? Who's speaking for the plaintiffs?

16 **MR. FREEMAN:** Your Honor, this is Dan Freeman on  
17 behalf of the United States. We would be happy to discuss the  
18 proper methods to search legislators' official e-mail.  
19 However, due to the position taken by legislators and the State  
20 of Texas in this litigation, it was necessary to subpoena the  
21 legislators in their individual capacity in order to obtain the  
22 private e-mails that many legislators use to (indiscernible)  
23 legislation. On the other hand, because the proper method to  
24 search a large group of individuals' e-mails that are all  
25 stored on the same server to ensure uniformity is to search

1 from the server side. We separately subpoenaed the TLC, and  
2 that's a method of search that the Perez court, you know, in  
3 redistricting just permitted.

4 **THE COURT:** Okay. Mr. D'Andrea?

5 **MR. D'ANDREA:** Your Honor --

6 **MR. FREEMAN:** Go ahead.

7 **MR. D'ANDREA:** Yeah, I -- I still don't understand.  
8 I still didn't hear an answer for the duplication. Because  
9 (indiscernible) they've already asked Speaker Straus and 16  
10 other legislators to search --

11 **THE COURT:** Okay. But isn't this -- isn't this  
12 something that you all should be communicating on? I feel like  
13 I'm kind of baby-sitting a conversation here, that maybe you  
14 all should figure out what it is.

15 **MR. D'ANDREA:** We can -- we can -- we'll -- we can  
16 talk about the duplication, your Honor.

17 **THE COURT:** Okay.

18 **MR. D'ANDREA:** I will -- I will reach out to  
19 Mr. Freeman --

20 **THE COURT:** All right.

21 **MR. D'ANDREA:** -- after this. And, so, we can --

22 **MR. FREEMAN:** That's not (indiscernible).

23 **MR. D'ANDREA:** We can bracket that.

24 **THE COURT:** Okay.

25 **MR. D'ANDREA:** I would like to raise one more issue.

1           **THE COURT:** Okay.

2           **MR. D'ANDREA:** And that is the second way that this  
3 subpoena is overbroad. And those are the search terms. And  
4 maybe this is something else you'd prefer that we discuss, but  
5 we -- I -- (indiscernible).

6           **THE COURT:** Well, have you all discussed? Because it  
7 certainly should be discussed by the lawyers before I step in.

8           **MR. FREEMAN:** Your Honor --

9           **MR. D'ANDREA:** We have.

10          **THE COURT:** Okay.

11          **MR. FREEMAN:** Sorry.

12          **MR. D'ANDREA:** We have, your Honor. But it -- do you  
13 think there is value to us resolving this? We will have  
14 further discussion to see if we can work this out.

15          **MR. FREEMAN:** Your Honor --

16          **THE COURT:** Well, it sounds like you all think there  
17 might be.

18          **MR. FREEMAN:** We -- we negotiated the search terms  
19 with Mr. Whitley on behalf of the State of Texas back when the  
20 State of Texas -- and the State of Texas ran the search terms  
21 to test whether they would be, you know, proper terms, back  
22 when the State of Texas was still admitting that they had  
23 control over TLC. They then disclaimed control of the TLC and,  
24 so, the subpoena contained the last set of search terms that we  
25 had sent back and forth to the State of Texas. It's our

1 understanding that they were proper and had been tested  
2 already, and to the extent that there are specific concerns  
3 regarding the search terms, we're happy -- we're happy to  
4 change some, but these --

5 **THE COURT:** Well, have you all --

6 **MR. FREEMAN:** -- (indiscernible) forward.

7 **THE COURT:** -- discussed this, Counsel? Have you all  
8 discussed -- did you discuss that with Mr. D'Andrea?

9 **MR. FREEMAN:** At the time, I believe, that we issued  
10 subpoena to TLC Mr. D'Andrea was not yet representing them.

11 **THE COURT:** And I just want a yes or no so I can tell  
12 you all to go talk.

13 **MR. FREEMAN:** I'm happy to go talk (indiscernible).

14 **THE COURT:** Okay. All right. What else,  
15 Mr. D'Andrea?

16 **MR. D'ANDREA:** The next thing, your Honor, is  
17 (indiscernible). The next thing we have is subpoena to  
18 testify, use the depositions, subpoenas. So, DOJ has briefed  
19 this and responded to our motion to quash, and their response  
20 suggests that the Department of Justice was pleased with the  
21 D.C. court's order in *Texas versus Holder* and if they still --  
22 if that is true, then the legislators also (indiscernible) an  
23 identical order that the D.C. court issued in *Texas v. Holder*,  
24 which is to say this court will not quash subpoenas, it should  
25 adopt the same approach as that court and allow deposition

1 testimony about public information and general legislative  
2 purposes only. Even the San Antonio court has walked back this  
3 part of the decision compelling legislators to testify --

4 **THE COURT:** Yeah, I can --

5 **MR. D'ANDREA:** -- (indiscernible).

6 **THE COURT:** I can kind of cut to the chase here, and  
7 then you all can point -- you all can argue some more if you  
8 want to, but I'm inclined to do exactly what the Perez court  
9 said. They provided -- their initial order said the -- I'm not  
10 going to quash the depositions entirely. I am inclined to  
11 follow what the Perez court said initially saying that the  
12 deponents could answer and the answer would be sealed and  
13 submitted to the Court for in camera; alternatively, their  
14 second order said the deponent could choose not to answer  
15 specific questions, the plaintiff could then file a motion to  
16 compel, and the Court would determine whether the privilege --  
17 whether it had been waived or whether the Court should compel  
18 an answer. So, I will let you all, now that you all know what  
19 I'm inclined to do, argue further.

20 Mr. D'Andrea?

21 **MR. D'ANDREA:** Yes. Yes, your Honor. Well, thank  
22 you for giving me a preview of your thoughts. I think -- that  
23 would work, (indiscernible) quash them. You know, I would say  
24 our information is, if -- if my client's trying to decide not  
25 to waive the privilege, our information will probably be to

1 adopt part B and then generate motions to compel.

2 **THE COURT:** Okay.

3 **MR. FREEMAN:** Your Honor, this is Dan Freeman on  
4 behalf of the United States. The distinction between the two  
5 Perez orders had to do fundamentally with the amount of time  
6 remaining before trial in each one of those cases, so the  
7 amount of time really remaining before the end of fact  
8 discovery. The first Perez order was issued imminently before  
9 a preliminary injunction hearing, and they used the procedure  
10 that was the only possible procedure to allow a deposition to  
11 be completed prior to closing fact discovery. Now, the second  
12 Perez order was issued six months before the end of fact  
13 discovery in the second phase of that case.

14 At this point we simply don't have time for the  
15 United States to go to Texas, depose each of these legislators,  
16 have those legislators broadly assert state legislative  
17 privilege, as they did in *Texas v Holder*, come back to this  
18 Court, ask for this Court to overcome that limited, qualified  
19 privilege, and then go back to Texas and conduct those  
20 depositions again. (indiscernible)

21 **THE COURT:** Well, that's what we're going to have to  
22 do. We are where we are.

23 **MR. D'ANDREA:** I under -- will your Honor be amenable  
24 to allowing the United States to pause depositions and contact  
25 the Court --



1           **THE COURT:** I --

2           **MR. D'ANDREA:** -- in order to allow things to proceed  
3 in an expeditious manner?

4           **THE COURT:** You know, if I anticipated, it would be  
5 just here and there, I would allow that. I just don't know  
6 what this is going to be like. I have a horrendous docket. I  
7 don't mean to whine here, but I've already told you all we have  
8 had a vacancy here for three years, so I don't know -- I would  
9 be open to that; I just don't know if it's really feasible.

10          **MR. D'ANDREA:** Your Honor, and -- and I don't mean to  
11 be flippant in asking this question, but how -- how would your  
12 Honor like us to proceed given the imminent close of fact  
13 discovery?

14          **THE COURT:** Well --

15          **MR. D'ANDREA:** At this time --

16          **THE COURT:** When are the depositions?

17          **MR. D'ANDREA:** -- the State has given us --

18          **THE COURT:** When are the depositions scheduled?

19          **MR. D'ANDREA:** The State didn't give us dates until  
20 this Wednesday, 5:00 p.m. Central. We have asked for a few  
21 changes; we have not heard back from the State yet.

22          **THE COURT:** When -- when are the depositions  
23 scheduled?

24          **MR. D'ANDREA:** They're the last -- they're the  
25 last -- well, excuse me. Ten of them are the last two weeks of

1 fact discovery. Two of them have already been scheduled in  
2 July, and it's my understanding that two of the other -- two of  
3 them are also on the last two days before expert depositions  
4 are due, and the (indiscernible).

5 **THE COURT:** Well, I have given you the order. You  
6 all need to sit down and visit about how that's going to be  
7 done, whether you're going to immediately after the deposition  
8 file some sort of brief or a joint statement with the Court and  
9 then we get on the phone. You all can visit about that and  
10 talk to Brandy. I mean, it's not the Court's fault that we are  
11 where we are. This case has been pending almost a year.  
12 Correct?

13 **(Pause; No audible response)**

14 **THE COURT:** Is anybody on?

15 **MR. D'ANDREA:** Yes, your Honor. I'm just --

16 **MR. SPEAKER:** Thank you, your Honor.

17 **MR. D'ANDREA:** -- trying to figure out exactly how we  
18 can (indiscernible) this before the close of fact discovery  
19 (indiscernible) --

20 **THE COURT:** Well, it's not going to -- I think your  
21 depositions will be done before the fact discovery, but I'm  
22 going to have to be hearing things after that; if we have to  
23 reopen them, I'm going to allow that to be reopened after  
24 the -- depositions to be reopened after the discovery deadline.  
25 It's the only thing we can do at this point.

1           **MR. D'ANDREA:** Okay. Thank you, your Honor.

2           **THE COURT:** Okay. What else?

3           **MS. BALDWIN:** Your Honor, this is Ms. Baldwin for the  
4 United States again. I'd like to ask, with respect to our  
5 opposition regarding the federal data, just given that  
6 defendants are going to have four days to generate their brief,  
7 and our brief, given the gravity of the issue, is going to have  
8 to be --

9           **THE COURT:** I would think you could start on your  
10 brief right now. You already know what the arguments are.

11           **MS. BALDWIN:** Your Honor --

12           **MR. SPEAKER:** I think we've got a copy already  
13 written.

14           **MS. BALDWIN:** Your Honor, we would just ask to have  
15 until Monday because we do have to circulate it to five federal  
16 agencies and up and down to the department leadership, and I  
17 would expect the leadership of those agencies --

18           **THE COURT:** That's fine.

19           **MS. BALDWIN:** -- (indiscernible).

20           **THE COURT:** You can have until Monday, which would be  
21 the -- what's that date?

22           **THE CLERK:** Sixteenth, your Honor.

23           **THE COURT:** The 16th.

24           **MS. BALDWIN:** I believe that's the 16th.

25           **THE COURT:** Okay. What else on the issue of the

1 motion to quash? Is there anything left hanging?

2 **MR. D'ANDREA:** No, your Honor. It's my understanding  
3 there is not. If your Honor would find it useful, the United  
4 States would be happy to provide a proposed order giving the 39  
5 dockets that these various motions to quash are currently  
6 sitting and (indiscernible) the order (indiscernible) -- or the  
7 district court (indiscernible).

8 **THE COURT:** Well, and -- right. And before I start  
9 getting competing orders, why don't you draft an order, send it  
10 to the defense; if there is an issue, we can get on -- we can  
11 address it. You can get with Brandy.

12 **MR. D'ANDREA:** Thank you, your Honor.

13 **THE COURT:** What other motions are anticipated? I  
14 understand there may be -- I don't -- let me just ask this.  
15 When the legislators were deposed in the other matter, did they  
16 claim the privilege? I mean, was it like repeated throughout  
17 the depositions? What -- I have no idea what to anticipate in  
18 terms of --

19 **MR. SPEAKER:** Your Honor (indiscernible) --

20 **THE COURT:** -- being available or handling it as a  
21 motion to compel. What -- what --

22 **MR. D'ANDREA:** And it -- it went by -- it depended on  
23 the legislator.

24 **THE COURT:** And who is speaking?

25 **MR. D'ANDREA:** Some of them -- Arthur D'Andrea.

1           **THE COURT:** Okay.

2           **MR. D'ANDREA:** Some of the legislators waived the  
3 privilege entirely, expressed a desire to do so, and then just  
4 spoke for seven hours. Some of them -- for example, we -- it  
5 was recently a deposition, you know, (indiscernible) took of  
6 Chairman (indiscernible), and in that one he asserted the  
7 privilege using the second option. So, counsel -- every time --  
8 - okay, if they asked what was the general legislative purpose,  
9 he answered; and if they asked about public statements, he  
10 answered; but if they asked anything about his own mental  
11 impressions or anything privileged, we instructed him not to  
12 answer, and he did not answer, and the deposition continued.  
13 And that continued throughout the deposition. So --

14           **MR. FREEMAN:** And, your Honor -- your Honor,

15           **THE COURT:** Who's speaking?

16           **MR. FREEMAN:** Your Honor, Mr. D'Andrea is referring  
17 to redistricting depositions --

18           **THE COURT:** Who's speaking? You all need to announce  
19 because --

20           **MR. FREEMAN:** Dan Freeman. I'm sorry. This is Dan  
21 Freeman on behalf of the United States. In *Texas v Holder* each  
22 and every one of the bill proponents asserted a state  
23 legislative privilege and refused to answer broad swaths of the  
24 deposition testimony. There were pages upon pages of  
25 speaking -- of speaking objections, instructing the legislators

1 not to answer a broad array of questions, and we anticipate  
2 that a huge percentage of these depositions will be subject  
3 to --

4 **THE COURT:** Okay.

5 **MR. FREEMAN:** -- legislative privilege objections.

6 **THE COURT:** How many deponents are you all talking  
7 about?

8 **MR. FREEMAN:** Well, we're talking about 12  
9 depositions, your Honor.

10 **THE COURT:** And how long do those depositions  
11 generally last?

12 **MR. FREEMAN:** Well, we anticipate that they will be  
13 shorter than last time because we did -- we did make some  
14 progress on issues that -- that the legislators --

15 **THE COURT:** Which is about how long?

16 **MR. FREEMAN:** I can't speak on behalf of the other  
17 plaintiffs, your Honor, but I anticipate that they'll be four  
18 to five hours.

19 **THE COURT:** Okay.

20 **MR. FREEMAN:** And I -- I can't waive other  
21 plaintiffs' rights to (indiscernible) --

22 **THE COURT:** And I'm not trying to pin you all down.  
23 I'm just trying to get an idea as to what's ahead for the  
24 Court. So --

25 **MR. FREEMAN:** I can provide your Honor with a

1 transcript of some of the depositions from *Texas v Holder* and  
2 highlight portions of those -- of those transcripts in which --  
3 to which objections were made out of the state legislative  
4 privilege.

5 **THE COURT:** No, thank you. I'm sure I'll be reading  
6 enough depositions from this case.

7 **MR. FREEMAN:** I was just --

8 **THE COURT:** But thank you.

9 **MR. FREEMAN:** -- (indiscernible).

10 **THE COURT:** Okay. What other motions are anticipated  
11 in this case? I'm trying to get a feel for what the Court will  
12 be facing between now and September.

13 **MR. CLAY:** Your Honor, this is Reid Clay of the State  
14 of Texas. You're aware of the 30(b)(6) protective order, so  
15 that one's out there.

16 **THE COURT:** Right.

17 **MR. CLAY:** Obviously, the federal databases is also  
18 out there. We will also be filing probably a pretty broad  
19 swath of motions for summary judgment based upon both some  
20 substantive issues but also some jurisdictional issues based  
21 upon deposition testimony from many of the plaintiffs in this  
22 case.

23 **THE COURT:** Okay. I mean, what -- what about from  
24 the plaintiffs?

25 **MR. DUNN:** Your Honor, this is Chad Dunn on behalf of

1 the Veasey LULAC plaintiffs. I can imagine that there will be  
2 some motions in limine filed, and, of course, we'll have to  
3 respond; the summary judgment motions have to be heard. The  
4 final thing, just to see if I can put a finer point on it, and  
5 really all of the legislator -- all of the legislators that  
6 were key to the development and adoption of SB 14 were deposed  
7 in the Section 5 case, and at this point to reconvene at a  
8 deposition and -- it's almost exclusively going to be on the  
9 topics that they wouldn't answer before, so unless these  
10 legislators change their position on where they think that the  
11 legislative privilege lies, we can expect that the vast  
12 majority of these reconvened -- or these depositions completed  
13 in this cause number, you know, are going to have to be dealt  
14 with. Now, I can imagine they'll probably fall into several  
15 categories, so the Court can resolve it on a category basis,  
16 but I think you can expect that to happen.

17 **THE COURT:** Okay.

18 **MR. DERFNER:** This is Derfner. What I would say is  
19 this. Recognizing what your Honor said about the burden, we  
20 all know that, and I'm aware of it, too, obviously. If there  
21 is some way that the parties can tee this up quickly by -- and  
22 possibly hear the motion -- the motions soon after the first or  
23 second deposition, the others probably wouldn't be that much  
24 different.

25 **THE COURT:** Yeah. I agree.



1           **MR. DERFNER:** (indiscernible) early on.

2           **THE COURT:** Mr. Scott?

3           **MR. SCOTT:** And, your Honor, Mr. Derfner's suggestion  
4 actually provided an idea that might allow us to resolve some  
5 of these issues regarding legislative privilege before the  
6 depositions occur to avoid the inefficiency to occur, fly out,  
7 get the same legislative privilege objections, and then fly  
8 back. Would it be possible for us to file motions to compel  
9 based on objections for -- under legislative privilege that  
10 were made during the depositions in *Texas v Holder* so that you  
11 could resolve some of these issues before the depositions  
12 occur, since we'll be stating the exact same legislative  
13 privilege objections?

14           **THE COURT:** Mr. D'Andrea, do you want to address  
15 that?

16           **MR. D'ANDREA:** It seems -- it's efficient, but it's a  
17 little bizarre. That's an entirely different case. I mean,  
18 the *Holder* court held that -- that's what it held, is that it  
19 was privileged, and it enforced the privilege pretty strongly.  
20 So, you know, I guess --

21           **THE COURT:** Yeah. I --

22           **MR. D'ANDREA:** -- check that Court's homework seems  
23 sort of strange, especially when --

24           **THE COURT:** But I agree with respect to we need to  
25 jump on it quickly. So, I don't know -- like, who's

1 scheduled -- when are the first depositions taking place?

2           **MR. D'ANDREA:** The first depositions, your Honor, the  
3 16th or 17th, your Honor. We're still responding to some  
4 requests to move them around. But it's that -- that week of  
5 the 16th is the first one. I -- I like the idea of getting  
6 this done quickly. I would need to reach out to these  
7 legislators and figure out are they going to waive the  
8 privilege. Now, they've -- they've asserted the privilege so  
9 far, but at least in the redistricting case, some of them  
10 changed their minds when faced with a deposition.

11           **MR. DERFNER:** We couldn't just find out whether  
12 they've changed their minds? And then, based on that, there  
13 would be enough material to -- not -- not going over the  
14 homework of the Holder court; (indiscernible) legislators would  
15 take the same position they did there, and not answer the same  
16 questions.

17           **MR. D'ANDREA:** I (indiscernible). This is D'Andrea.  
18 (indiscernible) reach out to them and see if they would still  
19 assert it. And, so, of course, they can always change their  
20 mind up to the (indiscernible) deposition, but I imagine  
21 sometime that week we could probably get a legislator who  
22 asserts the privilege and tees this up.

23           **MR. FREEMAN:** And, your Honor, I would just say that  
24 to the extent that the legislators have claimed that the  
25 privilege bars any deposition, I think that we're -- that this

1 issue is ripe. And it would be far more efficient for us to  
2 brief this based on questions already asked --

3 **THE COURT:** Yeah, I -- I --

4 **MR. FREEMAN:** -- and already not given.

5 **THE COURT:** I'm not inclined to go there. I'm  
6 inclined to jump on it as soon as we can. So, are you all  
7 doing, like, one -- one legislator a day? Or what's the plan  
8 here?

9 **MR. D'ANDREA:** Roughly, your Honor, yes. Some of  
10 them are doubling, because some of them are from Houston and  
11 some are Austin.

12 **THE COURT:** So, like, maybe one deposition on the  
13 16th, one deposition on the 17th?

14 **MR. D'ANDREA:** Yes. Yes, your Honor. That's kind of  
15 what it looks like.

16 **COURT RECORDER:** (indiscernible)

17 **THE COURT:** Yeah, I'm sorry. I keep -- I forget to  
18 tell you all to identify yourselves, and it's important for the  
19 record.

20 **MR. D'ANDREA:** I'm sorry, your Honor. This is Arthur  
21 D'Andrea. That is -- yes, your Honor. It's roughly one a day  
22 for those last two weeks of discovery.

23 **THE COURT:** When -- Brandy, when is our next  
24 conference?

25 **THE CLERK:** Our next ten days would fall within the

1 week of the 16th, but we've got some responses due. I'm not  
2 sure if you want to hold it that week.

3 **THE COURT:** Do you all want to have a status  
4 conference, like, on that Wednesday or Thursday, which would  
5 give you a couple of depositions under your belt?

6 **MR. D'ANDREA:** At this Court's earliest convenience,  
7 your Honor.

8 **MR. SPEAKER:** Yes, your Honor. That sounds good.

9 **MR. SPEAKER:** That sounds good.

10 **THE COURT:** Okay. Let's see. Brandy?

11 **MR. SCOTT:** And, your Honor. John Scott. That's  
12 June 17th or 18th?

13 **MR. ROSENBERG:** June 18th or 19th; Wednesday or  
14 Thursday.

15 **COURT RECORDER:** (indiscernible)

16 **THE COURT:** You're not identifying yourselves. I'm  
17 going to have to -- I'm going --

18 **MR. ROSENBERG:** I'm sorry. That was Ezra Rosenberg.

19 **THE COURT:** I'm going to have Brandy be the name  
20 patrol from now on out, so she can jump in any time she sees  
21 necessary.

22 So, what about June 18th at 2:00 o'clock? Because  
23 I've got a full day of sentencings, but I can probably hear you  
24 in the afternoon.

25 **MR. ROSENBERG:** Ezra Rosenberg here. That's fine;

1 fine for us, your Honor.

2           **THE COURT:** And at least to just get a feel for  
3 what's going on at the depositions and how we need to proceed  
4 with the privilege issue. At that point we should also, then,  
5 have the briefing on the federal database, correct?

6           **MR. SCOTT:** Correct.

7           **MS. BALDWIN:** Yes, your Honor.

8           **THE COURT:** And --

9           **MR. SCOTT:** John Scott.

10           **THE COURT:** I'm sorry. Anything else? See, I know  
11 you all's voices now, so I want to keep talking, so it's my  
12 fault, too. Anything else for today?

13           **MR. SCOTT:** John Scott on behalf of Texas, and  
14 nothing from our standpoint.

15           **THE COURT:** Plaintiff?

16           **MR. ROSENBERG:** Ezra Rosenberg for Texas NAACP.  
17 Nothing for us, your Honor.

18           **MS. WESTFALL:** Elizabeth Westfall for the United  
19 States. Nothing for us.

20           **MR. D'ANDREA:** Arthur D'Andrea. We're good, too,  
21 your Honor. Thank you.

22           **THE COURT:** All right.

23           **MR. DERFNER:** Armand Derfner, Veasey plaintiffs.  
24 Nothing.

25           **THE COURT:** Then, it sounds like that's all for

1 today. Thank you. You're excused.

2 ALL: Thank you, your Honor.

3 (Proceeding was adjourned at 4:01 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

June 9, 2014

TONI HUDSON, TRANSCRIBER